month. These accounts appear to be most unsatisfactory.

It is further agreed that towards the end of May, 1947, there was trouble between plaintiff and defendant. The certified copy of the report made by the defendant to the Police on the 27th May which is in the agreed bundle of correspondence produced, indicates the nature of that trouble.

In view of all the circumstances of this case I am of opinion that plaintiff has established his right to an account although dissolution of the partnership is not prayed. There will therefore be an order for taking accounts with leave to plaintiff to falsify and surcharge before the Registrar.

Order Accordingly.

SYED IBRAHIM BIN OMAR ALSAGOFF & ANOR. v. THE ATTORNEY-GENERAL.

[Orig. Civ. Juris. (Jobling, J.) December 19, 1947]
[Singapore — Probate No. 672 of 1947]

Mohammedan Law of intestate succession — Patron's right of succession to property of enfranchised slave — Patron's children's right derived through their father.

In or about the year 1890 Syed Omar Alsagoff lived at Jeddah in Arabia. While living there he purchased a slave boy one Salim Agha an Ethiopian by race and an eunuch. Soon afterwards Syed Omar manumitted the boy and gave him his freedom. At that time Jeddah and Arabia generally were within the territories of the Turkish Empire and the institution of slavery was legal by the law of Arabia. Later Syed Omar Alsagoff returned to Singapore bringing with him the freedman Salim Agha whom he then employed as a steward or Major domo. Syed Omar died in 1927 and Salim Agha died on the 1st January 1946 intestate. Salim Agha left no wife or children or other relatives. Syed Ibrahim bin Omar Alsagoff and Syed Ahmad bin Omar Alsagoff the sons of the patron, Syed Omar Alsagoff, petitioned the Court for a grant of Letters of Administration to them as the sons of the patron of the deceased intestate freedman. The Attorney-General entered a caveat against the Petition and the Court ordered that pleadings be delivered and that the matter do proceed as an action. Subsequently the parties agreed that the following points of law were raised in the Defence of the Attorney-General and could be heard and disposed of before the trial of the action namely whether assuming that the facts alleged in the amended Petition were correct the right to the estate of the intestate had or had not accrued to the Crown by escheat or as **bona vacantia**. Those questions of law were then set down for hearing under O. 26 r. 2(2) of the Rules of the Supreme Court.

Held, that by Mohammedan Law applicable to the Shafi sect or Madzhab the patron of an enfranchised slave has a right of succession to all the property of such enfranchised slave on his death intestate, by right of patronage in default of agnates. If the patron predeceases the freedman, the patron's agnates inherit the property in place of their deceased father.

Cases referred to :—

(1) *Santos v. Illidge* 141 Eng. Rep. 1404.

(2) *Buron v. Denman* 154 Eng. Rep. 450.

(3) *Madrazo v. Willes* 3 B & Ald. 353. Eng. Rep. 106.

(4) *Luther v. Sagor* [1921] 3 K.B. p. 558 per Scrutton L.J.

(5) *Dynamit Actien-Gesellschaft v. Rio Tinto Co.*, [1918] A.C. p. 299 per Lord Atkinson.

(6) *Sayad Mir Ujmuddin Khan v. Zia-ul-Nissa Benam & anor.* I.L.R. 3 Bom. 422.

APPLICATION FOR LETTERS OF ADMINISTRATION.

C. H. Butterfield for the Attorney-General.

John Laycock for the Petitioners.

The first proposition urged by the Crown is that rights arising out of a state of slavery cannot be recognised by the Courts of the Colony. There is no such rule of law, and no authority has been cited to support such a proposition. The authorities are clear and numerous and are all to the contrary. Dicey on Conflict of Laws 5th Edition pp. 536, 537. **Santos v. Illidge**(1), **Buron v. Denman**(2), **Madrazo v. Willes**(3). The rule is that the taking of property locally situated in a foreign country, in a manner lawful according to the laws of that country, depends for its validity on the local law of that country and will be recognised by the Courts of England or Singapore as lawful in the absence of any British law prohibiting the same. The ruling case of **Santos v. Illidge**(1) was decided in the year 1860 but it is still law and has been referred to with approval in **Luther v. Sagor**(4) and in **Dynamit Actien-Gesellschaft v. Rio Tinto Company**(5).

It is necessary to consider the effect of two English Statutes (not only one) 5 Geo. IV Cap. 113 and 6 & 7 Vic. Cap. 98. Both those Imperial Acts were of world wide application and were not confined to the United Kingdom, they were and are still law in Singapore. Both these statutes were considered in **Santos v. Illidge**(1). The case of **Sayad Mir Ujmuddin Khan v. Zia-ul-Nissa Benam & anor**(6) is purely a decision on Indian Act V of 1843 and is not in any way relevant unless the Crown can first show that Indian Act V of 1943 formed part of the law of Singapore on the 1st January, 1946. See p. 429 of **Zia-ul-Nissa's** case. Indeed from the judgment in the case it seems that but for that Indian Act the Indian Courts of the Privy Council would have given effect to the right of patronage in that case.

No doubt the Indian Act V of 1843 was at one time part of the law of Singapore but the Crown admits it was repealed in 1907 by Ordinance 33 of 1907. But if there were any doubt about the matter, S. 27 of the Mohammedan's Ordinance Cap. 57 puts the matter beyond doubt. This section was expressly enacted by Ordinance 26 of 1923 to apply the full provisions of the Mohammedan Law (**Shariat**) in the case of Mohammedan intestate succession in the Colony with the exceptions only which are specified in that section. If Indian Act V 1843 had been law in the Colony in the year 1923 — which it was not — this section must have worked an implied repeal of that Act. S. 29 of the Mohammedans Ordinance prescribes five text books on Mohammedan law as

authorities: But that does not mean that, for instance, the Anglo-Mohamedan law of India which is now largely a creature of Indian legislation is applicable to Shafi Mohamedans living in Arabia. No doubt **Wilson's** text book is authority on the law applicable to Hanafi Mohammedan Indians but the text book which is most pertinent for Shafi Arab Mohamedans is **Minhaj Et Talibin**. The right of patronage is clearly set out therein at pages 251, 252, 543 and 544.

Jobling, J. : — This is a petition by the Plaintiffs for a grant of Letters of Administration of the Estate of Salim Agha alias Salim Aga Alsagoff alias Haji Sallim deceased. The Attorney General filed a caveat in the matter and the Court ordered that it should proceed as an action.

The Attorney General has raised a point of law in accordance with Order 26 of the Rules of the Supreme Court and claims that the Plaintiffs are not entitled to a grant and that the estate had accrued to the Crown by escheat or as *bona vacantia.*

The deceased who was a Mohammedan belonging to the Shafi School of Law *(Madzhab)* died intestate on 1st January 1946 domiciled in Arabia leaving an estate and effects within the jurisdiction but without any next of kin.

The deceased had been the slave of the Plaintiffs' father who had manumitted him and became his patron according to Mohammedan law. The Plaintiffs claim the estate as patrons of the deceased in succession to their father who died in 1927.

Mr. Butterfield has argued for the Attorney General that rights arising out of a state of slavery cannot be recognised in this Court, and has referred me to the Abolition of Slavery Act 1833 and section 2 of the Indian Act No. 5 of 1843. The latter reads as follows :—

> "2. No rights arising out of an alleged property in the person and services of another as a slave shall be enforced by any civil or criminal Court or Magistrate"

and was applied to this Colony and then repealed as obsolete in 1907 (See S.S. Ordinance VIII of 1889 at page 14 in "Indian Acts" and Ordinance XXXIII of 1907 S.S. Ordinance 1903-7 page 139).

The gist of this argument is that English law does not recognise slavery and no rights based on it can be enforced in British Courts and this would no doubt be a sound argument if English law was applicable to this matter.

But, as Mr. Laycock has contended for the Plaintiffs, after the repeal of the Indian Act No. 5 of 1843 in 1907, the legislature amended the law in 1923 by Ordinance No. 26 of 1923 and re-enacted Section 27 of Cap. 57 to provide that Mohammedan law shall apply to estates of intestate Mohammedans. That section read as follows :—

> 27. In the case of any Mohammedan person dying intestate after the 1st January, 1924, the estate and effects shall be administered according to Mohammedan law, except in so far as such law is opposed to any local custom which prior to the 1st January, 1924, had the force of law: Provided that any of the next of kin who is not a Mohammedan shall be entitled to share in the distribution as though he were a Mohammedan.

This was the law in force at the time of the deceased's death and therefore applies to his estate. The legislature has gone further and prescribed the text books to which the Courts may refer to discover the Mohammedan law applicable to any circumstances. The result of this is that the legislature has directed the Courts to apply Mohammedan and not English law to the administration of estates of Mohammedans dying intestate and it is immaterial what English law has to say on the subject of the administration of such estates.

Mr. Laycock has referred me to *Howard's* translation of *Van den Berg's* French translation of *Minhaj Et Talibin* which is a manual of Mohamedan Law of the Shafi School and one of the text books prescribed by Section 29 of Cap. 57 and from Section 7 (page 251) and Section 4 (page 543) thereof it appears :—

(1) That a person who frees a slave retains over him the right of patronage and

(2) That a patron of an enfranchised slave must be accepted as an agnate of the slave and that in the event of the death of the patron the latter's agnates succeed to his right.

In my view therefore Mohammedan law must be applied in this matter and since Mohammedan law recognises the right of patronage over enfranchised slaves and the Plaintiffs appear to be entitled to that right in respect of the deceased the deceased's estate does not *escheat* or fall to the Crown as *bona vacantia.*

The claim of the Attorney General is therefore dismissed and I direct the issue of a grant of letters of administration of the deceased's estate to the Plaintiffs on the usual terms. The question of costs is adjourned for argument later.

Claim Dismissed.